

REMARKS

In the Final Office Action dated February 29, 2008, the Examiner rejected claims 1-35 and 37-40 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement; rejected claims 1-20, 24-28, and 37-40 as being unpatentable over U.S. Patent No. 6,390,311 to Belokin ("Belokin") in view of U.S. Patent No. 6,355,161 to Shah et al. ("Shah"); and rejected claims 21-23 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Belokin in view of Shah and further in view of U.S. Patent No. 5,722,947 to Jeppsson et al. ("Jeppsson").

By this Reply, Applicant has amended claims 2, 4-6, 8-10, 12, 13, 16-19, 21, 23-27, 29, 37-40, canceled claims 1, 7, 14, and 28 (claims 30-36 were previously cancelled), and added new claims 41-49. Accordingly, claims 2-6, 8-13, 15-27, 29, and 37-49 are currently pending. Support for the changes to the claims and the new claims is self-evident from the originally filed disclosure, including the original claims. Support can be found, for example, in prior claims 1, 5, 6, 7, 14, 21, 22, and 26; in the specification at pages 4, 5, 7, 8, and 9; and in the figures 1, 2, 6, and 7. No new matter is added.

REJECTION UNDER § 112

In the Final Office Action dated February 29, 2008, the Examiner rejected claims 1-35 and 37-40 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Although Applicant does not necessarily agree with this rejection, Applicant's cancellation of claim 1 has rendered the rejection of claims 1-35 and 37-40 moot. Accordingly, Applicant requests that this rejection be withdrawn.

REJECTIONS UNDER § 103(a)

In the Final Office Action, the Examiner rejected claims 1-20, 24-28, and 37-40 as being unpatentable over Belokin in view of Shah and rejected claims 21-23, 29 under 35 U.S.C. § 103(a) as being unpatentable over Belokin in view of Shah and further in view of Jeppsson. Although Applicant does not agree with these rejections, Applicant has cancelled claim 1 and submits that this rejection is moot in view of the currently pending claims.

INDEPENDENT CLAIMS 41, 42, AND 49

Applicant submits that new independent claim 41 is patentable over Belokin, Shah, and Jeppsson. Independent claim 41 recites, among other things, “sensors for weighing a container fixed to the base body, said sensors for weighing comprising at least one measuring balance for weighing a container hung to the support device, the means for hanging the container and the container being configured below the measuring balance in the work condition of the support element.”

The Examiner contends in the Final Office Action that Belokin discloses “a support device for liquid containers that is capable of being used with an extracorporeal blood machine, comprising a base body 13 and a plurality of support elements 11/17, 12/17, wherein the support elements are slidable or rotatable around the base body, creating a horizontal displacement of part of the support elements with respect to the base body.” (Final Office Action at 3.) The Examiner concedes that Belokin does not disclose a weighing means. However, the Examiner contends that Jeppsson discloses “a dialysis system comprising a support element for holding solution containers (see FIG 1) and a weighing device 7 for weighing containers and a regulating system 6 for

controlling fluid flow based on the weighed containers (see columns 3-4), therefore comprising a measuring and/or control balance. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to add a weighing and control system as disclosed by Jeppsson to the support system suggested by the prior art.” (Final Office Action at 6-7.)

Applicant submits that the Examiner’s proposed combination does not teach, suggest, or disclose each and every element of independent claim 41. For example, if the Jeppsson scale is fixed to Belokin base body 13 (see Belokin, Fig. 1), then the means for hanging the container and the container will not be “placed below the measuring balance,” as required by independent claim 41. By contrast, if the Jeppsson measuring system is fixed to the supporting arm of Belokin, then the “sensors for weighing a container” will not be “fixed to the base body,” as required by independent claim 41. Moreover, the containers will always be placed below the scale (both in the work and in the loading conditions).

In the Final Office Action, the Examiner also contends that “it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus that satisfies the structural limitations.” (Final Office Action at 4.) The Examiner further states that the “motor/controller disclosed by Shah is capable of being programmed to operate in the manner claimed by applicant, rendering the instant claims unpatentable over the prior art.” (Final Office Action at 4.) Applicant disagrees.

Applicant submits that a “control unit reading and validating the signal proportional to the weight of the container only in the operative work condition of the

support element,” as recited in independent claim 41, is not an intended use, but rather describes a structure (i.e., a control unit with hardware and programming) specifically configured to “[read] and [validate] the signal proportional to the weight of the container only in the operative work condition of the support element.” Applicant further submits that limitations in apparatus claims that describe software or control steps should be considered during examination. For example, as described in In re Beauregard, “computer programs embodied in a tangible medium, such as floppy diskettes, are patentable subject matter under 35 U.S.C. § 101 and must be examined under 35 U.S.C § 102 and 103.” In re Beauregard, 53 F.3d 1583 (Fed. Cir. 1995).

Applicant also submits that Jeppsson, Belokin, and Shah do not teach or suggest “a control unit for receiving from the measuring balance a signal proportional to the weight of the container, the control unit reading and validating the signal proportional to the weight of the container only in the operative work condition of the support element,” as recited in independent claim 41. Applicant notes that correct container weight is important for dialysis treatments, and when the container is not correctly placed under the scale, the weight reading is wrong and the machine may not work properly. Thus, having a control unit further programmed for validating as correct the measured weight only in the correct position of the container (work position) eliminates operator mistakes. Accordingly, Applicant submits that claim 41 is allowable over Belokin, Shah, and Jeppsson for at least the aforementioned reasons.

Applicant also submits that new independent claim 42 is patentable over Belokin, Shah, and Jeppsson. New independent claim 42 recites, among other things, “a support element associated to the base body, the support element being guided and

translating with respect to the base body in a horizontal plane between at least one operative loading position . . . the support element comprising means for hanging a container [and] a lower zone of a machine, the base body being fixed to said lower zone of the machine and being interposed in use between the lower zone and the means for hanging the container.” Belokin, Shah, and Jeppsson fail to disclose or suggest at least these features and therefore independent claim 42 should be allowed.

New independent claim 49 is also patentable over Belokin, Shah, and Jeppsson. New independent claim 49 recites, for example, “a plurality of support devices for containers of liquids in extracorporeal blood treatment machines . . . and a control unit controlling the stop means to enable contemporary extraction only of a predetermined number of support elements of the support devices.” Belokin, Shah, and Jeppsson fail to disclose or suggest at least these features and therefore independent claim 49 should be allowed.

With respect to new independent claim 49, Applicant further submits that no new matter has been added. Specifically, the presence of a plurality of support devices is clearly disclosed by Figures 6 and 7. Moreover, Applicant submits that a control unit programmed for “controlling the stop means” is clearly a limiting feature for the same reasons as mentioned above in connection with independent claim 41. For example, Shah has a control unit capable of being programmed, but the control unit of Shah is not programmed for implementing “controlling the stop means to enable contemporary extraction only of a predetermined number of support elements of the support devices,” as required by independent claim 49. By using the control recited in claim 49, the stability of the device is clearly increased due to the fact that it is not possible for the

operator to contemporaneously extract all the support elements included in the apparatus. Loading of all the containers at the same time could decrease the stability of the device itself. Neither Belokin, Shah, nor Jeppsson teach, suggest, or disclose this feature. Accordingly, new claim 49 is allowable for at least the aforementioned reasons.

DEPENDENT CLAIMS

Applicant respectfully submits that dependent claims 2-6, 8-13, 15-27, 29, 37-40, and 43-48 are allowable over the cited references due at least to their dependence from at least one of allowable independent claims 41, 42, or 49 and due to their additional recitations of novel subject matter. For example, the additional recitations of novel subject matter for dependent claims 23, 25, and 45-48 are discussed below.

With respect to dependent claim 23, for example, it is respectfully submitted that neither Belokin, Shah, nor Jeppsson disclose or suggest “a control balance, said control balance being a further balance.” Additionally, the cited references do not disclose a “control unit receiving a signal proportional to the weight of the container to verify that the measuring balance is working correctly.”

With respect to dependent claim 25, for example, Applicant submits that Belokin, Shah, and Jeppsson do not disclose or suggest excluding “loading of a container” when “in the operative work condition of the support element, “ as recited in dependent claim 25. For example, Belokin allows loading of a container both in the work condition and in the loading condition.

With respect to dependent claim 45, for example, Applicant submits that Belokin, Shah, and Jeppsson do not disclose or suggest a support element having a “further arm supporting said means for hanging a container, said further arm being placed outside

the guide of the base body and movable between a loading position in which the further arm is placed laterally of the base body and a work condition in which the further arm is placed below the base body” (emphasis added), as recited in dependent claim 45.

With respect to dependent claim 46, for example, Applicant submits that Belokin, Shah, and Jeppsson do not disclose or suggest a support element having a “connecting portion for joining the elongated arm and the further arm, the connecting portion being laterally placed with respect to the base body both in the loading position and in the work condition,” as recited in dependent claim 46.

With respect to dependent claim 47, for example, Applicant submits that Belokin, Shah, and Jeppsson do not disclose or suggest a support element having “two elongate arms horizontally slidable in guides of the base body in order to displace between the operative loading position and the operative work position,” as recited in dependent claim 47.

With respect to dependent claim 48, for example, Applicant submits that Belokin, Shah, and Jeppsson do not disclose or suggest connecting joints joining “together both the elongated arms and the further arm supporting said means for hanging a container,” as recited in dependent claim 48.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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